

IMPAIRED DRIVING PROGRAM



Alberta
SOLICITOR GENERAL

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- **Administrative
Licence
Suspension**
- **Random Breath
Testing**
- **Vehicle
Immobilization**

ADMINISTRATIVE LICENCE SUSPENSION

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A. INTRODUCTION

This briefing paper describes the administrative licence suspension process and assesses this proposed countermeasure in respect of its effectiveness in reducing alcohol-related traffic accidents. Additionally, specific implementation concerns are outlined for discussion purposes.

There is no province in Canada currently utilizing administrative licence suspension. Therefore, the contents of this paper only outline the American experience.

B. DESCRIPTION

The traditional method of taking licence action against an impaired driver has been to impose a licence suspension after the driver was convicted of impaired driving. However, in many instances, months or even years elapsed from the time of the offence until the time the suspension occurred. Administrative suspension of alleged impaired driver's licences was proposed in the United States, in order to ensure that the sanction of licence suspension occurred immediately.

Administrative suspension statutes typically require the arresting police officer to seize the licence of a driver who either refuses an evidentiary chemical test for alcohol or "fails it" (has a blood alcohol at or above the legal standard of intoxication). The arresting police department issues the driver a receipt and forwards the seized licence to the state driver licensing agency. The receipt serves as a temporary licence until the driver licensing agency has taken final action (American Bar Association, February 1986).

The administrative suspension automatically takes effect when the driver fails to appeal the licence seizure by asking for a hearing within the time allowed by law. If the driver requests a hearing, then the suspension takes effect in cases where the driver licensing agency rules against the driver during the hearing. A driver may appeal the agency's decision to a court, but that appeal usually does not stay the suspension (American Bar Association, February 1986).

The administrative suspension period is fixed by law. It is typically 90 days for a first offender who fails a chemical test and 180 days for a first offender who refuses to submit to a test. Many states allow a driver, who takes and fails a test, to obtain a restricted licence (American Bar Association, February 1986).

C. ASSESSMENT OF INITIATIVE

As of September 1, 1988, 24 states had enacted administrative suspension legislation. A number of studies indicate the effectiveness of administrative licence suspensions. A recent study by the Insurance Institute for Highway Safety (IIHS) found that such laws reduced fatal crashes by approximately 9% during high risk periods of alcohol involvement. Minnesota, New Mexico, Nevada, North Carolina, Oklahoma, Oregon,

West Virginia and Wisconsin have observed significant reductions in alcohol related fatal crashes following the implementation of licence suspension/revocation procedures. Administrative licence suspension has also proven highly effective in reducing subsequent crashes and violations by offenders (Blomberg et al, June 1987).

In numerous states alcohol related arrests increased, without an increase in manpower. This happened because police officers increased their efforts when they observed the positive effects of administrative licence suspension (Blomberg et al, June 1987).

Refer to Appendix A for a further breakdown of state successes with administrative licence suspensions.

D. PROVISIONS THAT SHOULD BE INCLUDED IN AN ADMINISTRATIVE LICENCE SUSPENSION PROGRAM

The following provisions, as they apply to the Canadian experience, should be incorporated in any proposed administrative licence suspension legislation. A more detailed breakdown of implementation concerns related to this program is contained in Appendix B.

1. At the time of arrest, the arresting officer should serve the notice of suspension/revocation, issue a temporary licence and advance notice of revocation, and pick-up the offender's licence. This leaves no doubt that the legal notice has been served, secures the licence immediately, and assures that due process procedures are complied with because the notice handed to the driver should describe appeal rights, availability of limited licensure and other legal recourse.
2. Legislation should provide for financial self-sufficiency.
3. Legislation should not require that the arresting officer be present at the administrative hearing. If the defense desires to have the officer present at the hearing, the witness can be subpoenaed.
4. Legislation should not locate the hearings for the convenience of the offender. The hearing should be conducted in the place of arrest, or other location chosen by the licencing agency.
5. Legislation should budget for an increased number of hearings. An average of 25% of offenders request hearings. However, the hearing request should not be a vehicle for the defender to delay the suspension/revocation. Administrative reviews, such as are used in Minnesota, will reduce the number of hearing requests. In Minnesota, the administrative review is conducted by a driver safety analyst, who reviews information provided by the driver and all relevant reports submitted by enforcement agencies. The analyst then makes a determination of whether or not sufficient cause exists to stay the licence suspension order. The determination has no effect on the judicial review of the case. This procedure was upheld by the Minnesota Supreme Court (Blomberg, et al, June 1987).



E. FINANCIAL COST OF INITIATIVE

Many factors need to be considered when determining the cost of implementing an Administrative Licence Suspension Program:

1. Personnel hired to handle the paperwork associated with an increased number of suspension.
2. The anticipated number of hearings that will be requested.
3. New forms that need to be developed and printed.
4. Costs associated with police appearance at the hearings, if necessary.

A 1986 National Highway Traffic Safety Administration (NHTSA) survey provides an estimate of the first year's costs for developing and implementing an Administrative Licence Suspension Program. Ten states were surveyed to determine what would have been expended in excess of the former program's cost. The costs averaged approximately \$100,000, based on hiring four additional clerks, printing new forms, training, and miscellaneous administrative expenses. The costs ranged from \$60,000 to \$390,000 (Blomberg, et al, June 1987).

F. OPTIONS FOR PROGRAM IMPLEMENTATION IN ALBERTA

As the Administrative Licence Suspension Program has proven to be successful in reducing alcohol related traffic accidents, it would be worthwhile to pursue its further development in Alberta. It is proposed that the Alberta program be operationalized as follows:

1. The arresting police authority would seize the licence of a driver who either refuses an evidentiary chemical test for alcohol or "fails it" (has a blood alcohol at or above the legal standard of intoxication).
2. The arresting police authority would issue the driver a receipt and forward the seized licence to the Driver Control Board. The receipt serves as a temporary licence until the Driver Control Board has taken final action.
3. The Driver Control Board would administer the program and provide required hearings.
4. The Driver Control Board's findings at hearings would be transmitted to the Driver Management Branch, so an adjustment could be made to the Motor Vehicles Division MOVES system and the Driver's Abstract, if necessary.
5. The administrative suspension automatically takes effect when the driver fails to appear at his/her hearing or attends a hearing, but a ruling against the driver is handed down.

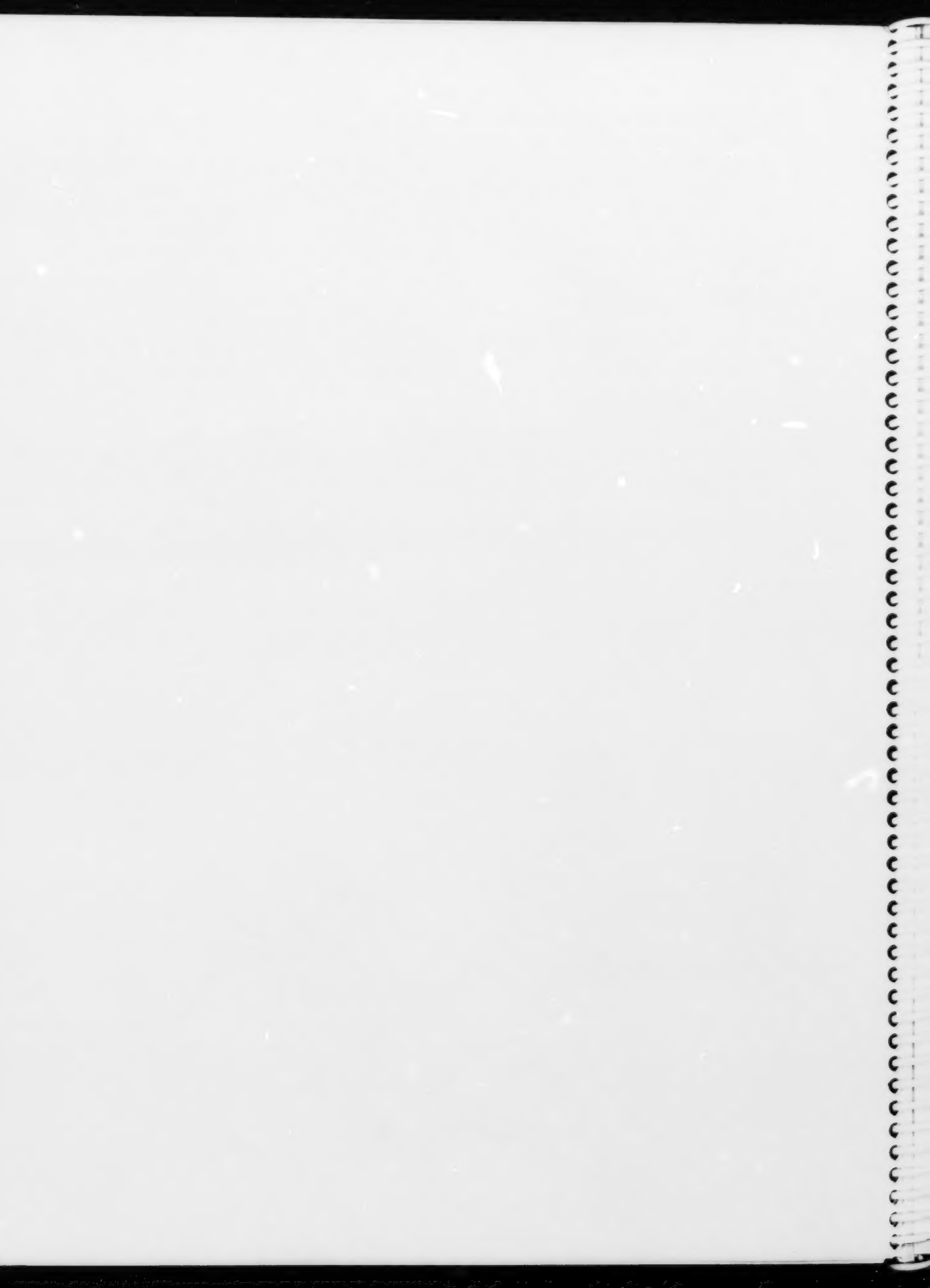
6. Unlike the American programs described above, the administrative suspension period should perhaps only be fixed for first time offenders. In cases of multiple or recurring impaired driving charges, or incidents where an injury or death occurred, it would be counterproductive to return the offender's licence prior to a court adjudicated resolution. Therefore, in these cases, the administrative licence suspension would be in effect until all court proceedings were completed. The driver's licence would be returned to the offender only if he/she were acquitted.

G. CONCLUSION

The preceding paper has described the administrative licence suspension process and will serve as the basis for further discussion of this proposed countermeasure.

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APPENDIX A: STATE SUCCESSES

DELAWARE

Of the persons whose licences were revoked for at least 90 days (average 7.8 months) only 1.5% lost their jobs due to the loss of the driving privilege.

Source: The Effect of Administrative Licence Revocation on Employment; NHTSA., August, 1986.

IOWA

Iowa crash fatalities reached a new 40 year low during the first full year of the program. Iowa is striving yearly to improve and streamline its program. Hearings are a problem. An offender can request two hearings, three stay orders, a Director's review, and at least two continuances before exhausting his/her administrative remedies. Initially it was necessary to have a hearing for an offender to qualify for a hardship licence. This has been corrected.

"Based on my 35 years experience as a highway patrol officer and a driver licencing official, I believe administrative per se is the most effective means we have found to impose revocations and reduce crashes of DWI offenders".

Source: Alton Chrystal, Director, Office of Driver Services, Iowa Department of Transportation, 26-11-86.

ILLINOIS

Prior to adopting administrative per se it took five months from the day of arrest for DWI suspensions to become effective. Now they become effective in only 46 days. The Illinois program became operational on January 1, 1986. During the first quarter of 1986, 7,594 drivers were suspended for offences committed during the current year as compared to only 699 for the same period in 1985.

Source: Secretary of State News Release, 28-4-86

MINNESOTA

In June, 1985, roadside surveys revealed that one of every 24 drivers was drunk (BAC greater than .10) after midnight. Ten years earlier, just prior to adoption of administrative per se, one in 10 was drunk, a 60% reduction.

Source: Minn. Alcohol Roadside Survey Report, St. Cloud State University, Sept., 1985.

Hearings used to be a problem in Minnesota because initially they were conducted by municipal judges. In 1983 a new administrative review process was adopted that reduced hearing requests. Prior to 1983 about 1,000 hearing requests per month were processed, the new law reduced the total number of administrative and judicial reviews to about 3,000 per year. Since 1976 the traffic death rate per 100 million miles has dropped from 3.0 to 1.76.

Source: "Minn. Double Barrelled Implied Consent Law", 1983.

NEVADA

Alcohol-related fatalities were reduced by 41% from 1982 to 1984.

Source: Bruce Glover 16-4-85 (Approx.)

NORTH DAKOTA

Alcohol-related fatalities dropped 37% during the first full year of operation.

Source: Elden Spier, Director Driver Licence Division, State Highway Department, 16-4-85.

OKLAHOMA

Effective date of Administrative per se law 1-4-83

	1982	1983	1984	1985
Fatal Crashes	933	726	720	661
Alcohol Related	457	304	266	171
Fatalities	1070	854	817	749

State officials view administrative per se as the most important element of their comprehensive program because it has changed the public perspective. DWI arrests continue to decrease due to fewer drunk drivers on the road. Police and prosecutors like it.

Source: Capt. Larry Owen, Department of Public Safety 25-11-86.

OREGON

During the first six months of the new law, monthly Oregon accidents were reduced by an average 7.6 alcohol-related fatalities and 144.6 serious nighttime injuries.

Source: Senate Bill 710 and Traffic Safety, April 1985.

UTAH

The law has been extremely effective, and through a series of workshops has improved relations between the public and the State licencing agency. News reports and informal surveys reveal that drivers place great value on their licences and the promptness of administrative revocations creates a significant DWI deterrent.

Bar owners have actively solicited alternate forms of transportation such as Van Pools, designated drivers, and taxicabs. Some have even installed breathalyzers for customer use.

The courts have been very supportive of the programs.

The police are very supportive as reflected in the increase in DWI arrests from 7,900 in 1980 to 14,354 in 1984.

Source: Richard Howard, Program Manager, Highway Safety Division, Department of Public Safety 26-11-86.

APPENDIX B: SPECIFIC PROBLEMS

1. PAPERWORK

Police are inundated with paperwork, and they resent being required to produce even more. Some states require the use of several new forms by the police in the administrative revocation process, but in other states it is limited to one new form. It should be limited to one, if possible, printed in plain, simple English for the benefit of the offender, with a minimum number of copies required.

2. NEW CONCEPT

This is a new concept. Training and orientation must be provided for police, judges, prosecutors and licensing personnel.

3. NOTARIZATION

A requirement that the police report be notarized creates a problem. It seems unnecessary, and the law should simply state that the police report shall be accepted at face value without being sworn or attested to. If this process is unavoidable, police officers should have the authority to "swear in" one another for this purpose.

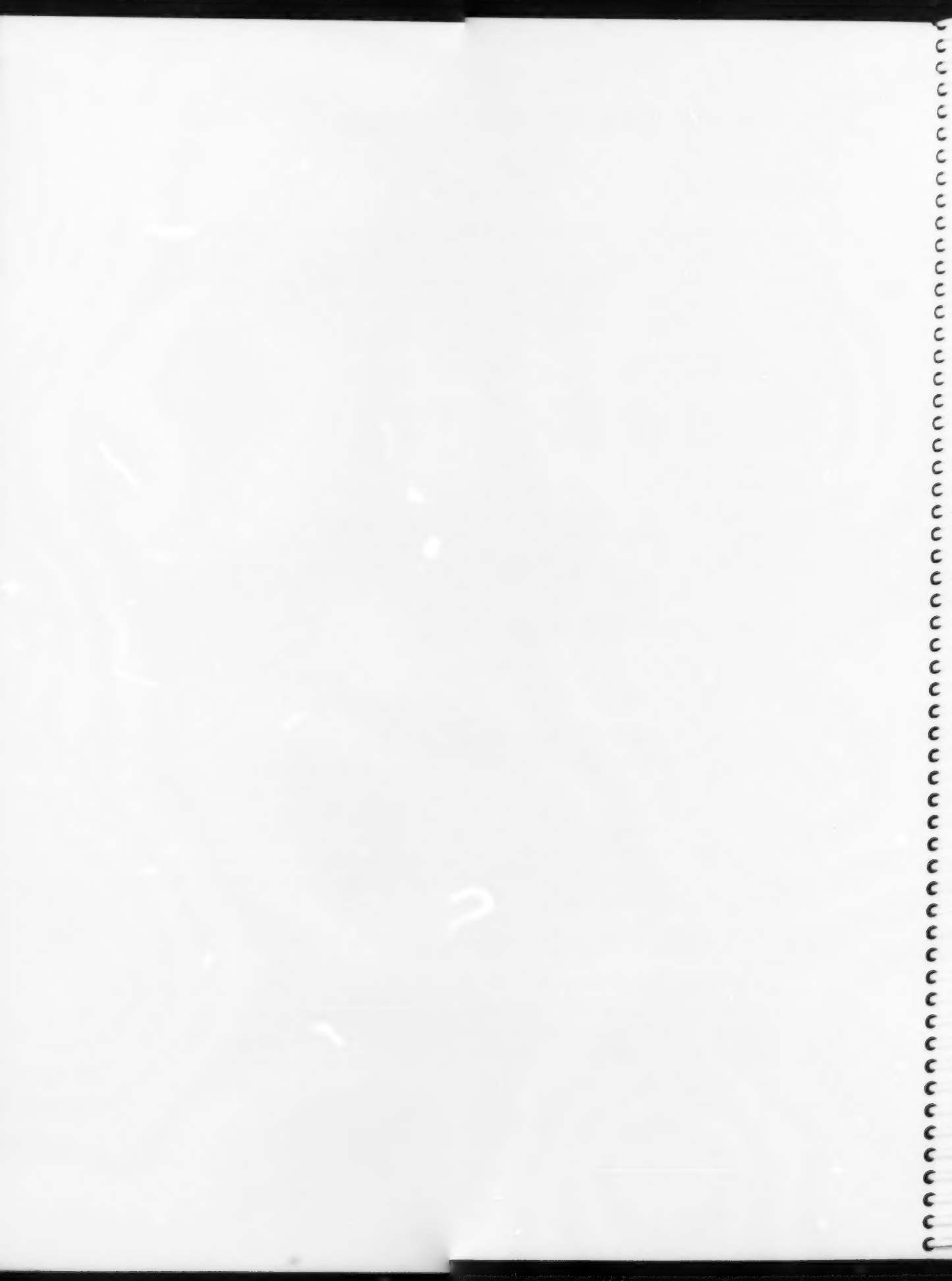
4. POLICE APPEARANCE AT HEARINGS

Some states require that the arresting officer appear and testify at administrative hearings on the basis that the accused has a right to face his accuser.

Under the U.S. Constitution, this is a concept of criminal justice, but it should not (and probably does not) apply to administrative actions. In those states where the constitution is more strict and would ordinarily require the officer to testify at hearings, the law may be written to exempt the requirement, as in the case in Illinois. Although the defendant may still subpoena the officer to testify, this has been done infrequently in Illinois. In other jurisdictions, it may be possible to relieve the burden by accepting the officer's testimony over the telephone, as is the case in Iowa, or videotapes may be used although the witness can not be questioned.

5. ADMINISTRATIVE VS. COURT DECISION

Some states provide that if the offender is found not guilty in criminal court that the administrative suspension shall be rescinded. This is a serious error. The administrative track should remain separate from the criminal track. The outcome of the criminal case should have no bearing on the administrative action.



6. LENGTH OF REVOCATION

The length of the revocation period should not be excessive. A complete loss of driving privileges for 90 days is probably adequate for first offenders, one year for second offenders, and a longer period of time for third and subsequent offenders. One reason for this is to reduce the demand for hardship licences (work permits), particularly for first offenders. Studies show that short term revocations reduce subsequent violations and crashes of alcohol offenders, and a long period raises public (and legislative) fears that the violator may be put on welfare or may lose his/her job.

7. LOSS OF JOBS

A common fear is that first offenders, who may never have driven after drinking too heavily, may lose their jobs if they lose their driving privileges. A 1986 study in Delaware revealed that actually only 1.5% of them lost their jobs for that reason. All of these were persons whose condition of employment was that they drive on the job, such as two school bus drivers who were in the group.

A similar 1987 study in Mississippi revealed the same results. "Among offenders, the group that had been suspended were unemployed at any time in the previous year only three percent more than offenders who had not been suspended". This difference is not statistically significant.

8. NUMBER OF HEARINGS

Hearings can be a problem. Only one hearing should be permitted, with judicial review based on the record. Otherwise an intolerable burden may be placed on the licencing agency, witnesses and other officials. Only one continuance should be allowed, for cause, for each side. The law should provide that the hearing must be conducted within a limited number of days to avoid lengthy stay orders. In Iowa, for example, the offender can request two hearings and a director's review, and obtain three stay orders and at least two continuances before exhausting the administrative remedies. This process can easily exceed one year, and is the sort of thing that should be avoided. Also, hearings should be held within the venue of the offence to avoid requiring witnesses to travel long distances to testify. The use of telephoned testimony is a useful means of reducing expense to both the licencing agency and the police.

9. PROMPTNESS

Suspensions must be imposed promptly. For example, in Minnesota it is reported that 90% of the offenders lose their licences in seven days. In Delaware, 77% lose them in 15 days, and in Iowa 75% lose them in 20 days. The remaining percentage in Iowa and Delaware are those persons who request hearings, or for other reasons encounter delays. It may be interesting to note that in Iowa less than 50% of those arrested for DWI are convicted, but 98% of them still lose their driving privileges administratively.

10. JUVENILE OFFENDERS

There appears to be no good argument for exempting juveniles from administrative DWI suspensions. No other cause creates so much injury and death for young persons as do automobile crashes, many of them alcohol related. If juveniles are to be licenced to drive, they must accept the responsibilities that go with it.

11. BREATH TESTING EQUIPMENT

Advanced planning can go a long way toward overcoming problems with this issue. For example, the design/type/make of acceptable equipment should be specified by statute or administrative rule, the required training of operators should be clearly specified, and the processing procedures must be clearly spelled out to avoid unnecessary case losses and suspension rescissions.

12. TEST REFUSALS

It is a mistake to revoke the licence of persons who fail the alcohol test, but to not take the same action against those who refuse to take it. Also, persons who refuse the test should be refused a hardship licence, if the violation is in a location that permits their issuance and use.

13. PUBLIC INFORMATION

It is a grave mistake not to provide the public, legislators, courts, police and everyone else informative and accurate information on the provisions of the program. It should be presented in a positive manner, with frequent periodic updating.

14. PROGRAM SELF-SUFFICIENCY

Provisions must be made for funding the program on a continuing basis. Most logically, this should be through: driver licence and licence reinstatement fees; hearing filing fees; witness fees at the administrative hearings; requiring the side requesting judicial review to pay the cost of transcribing the hearing record; and other fees if additional specific costs are identified.

RANDOM BREATH TESTING

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A. INTRODUCTION

This briefing paper will describe Random Breath Testing, provide information as to how this countermeasure is being used in other jurisdictions and assess its effectiveness in reducing alcohol-related traffic accidents. The cost of further developing this initiative and the options for implementation of same, in Alberta, will also be explored.

B. DESCRIPTION

Road blocks are generally the systematic stopping of traffic in order to "check" drivers licences and registrations and to provide a brief vehicle safety inspection. Sobriety checkpoints or random breath test stops, on the other hand, are the systematic stopping of road traffic for the purpose of detecting alcohol on the driver (Sutton, et al, 1987).

Random breath testing, as practiced in many parts of Australia allows police authorities to request a preliminary breath sample from any or all drivers. Police authorities need not suspect inebriation prior to requesting a breath sample. This is not typically the practice of Canadian or American jurisdictions, where a police officer must suspect inebriation prior to requesting a breath sample.

C. JURISDICTIONAL USE OF RANDOM BREATH TESTING

1. Britain

Random breath testing has been in effect in Britain since the early 1980's, however, no documentation could be found which outlines how the program is operationalized in this country.

2. Scandinavia

In the past decade, there has been a movement in the Scandinavian countries, away from an approach emphasizing severity of punishment to one stressing certainty of apprehension. In the late 1970's, random breath testing procedures were implemented in Finland, Denmark, Sweden and Norway. Although there is no indication in the literature as to how the random breath testing program was operationalized in these countries, one source indicates the following information about the Finnish program:

- a) Random breath testing was introduced in Finland in 1977.
- b) Commencing in 1979, roadside surveys were designed to allow representative sampling of traffic.
- c) Each random breath sampling team consisted of eight to twelve police officers with alcometers who could screen up to 500 drivers during a half hour period.
- d) All drivers passing the control point were breathalyzed (Dunbar, et al, 1987).

3. Canada

Sobriety checkpoints are operational in some regions of Canada. In order to request a breath sample, however, police authorities must suspect a driver has been drinking. Hence, drivers are not requested to provide a breath sample on a random basis, but rather because there is a suspicion that he/she has been drinking and may be impaired. There is no true random breath testing program in Canada.

The following provinces utilize sobriety checkpoints:

- a) Ontario - Reduce Impaired Driving Everywhere (RIDE);
- b) British Columbia - Counterattack;
- c) Alberta - Checkstop;
- d) Quebec - Checkstop;
- e) Nova Scotia - Checkstop.

The Ontario, British Columbia and Alberta programs are operational year round. All provinces note some form of sobriety checkpoint during the Christmas - New Year period.

4. United States

As with the Canadian experience noted above, the United States utilizes sobriety checkpoints in most states, however, police authorities must suspect a driver has been drinking prior to requesting a breath sample. Additionally, the driver must submit and fail the standard field test (walking a straight line) prior to being breathalyzed.

The United States Department of Transportation - National Highway Traffic Safety Administration does not know how many states utilize sobriety checkpoints. They did advise, however, that legislation authorizing the use of sobriety checkpoints is currently being challenged in 27 states.

5. Australia

In June, 1976, police in the state of Victoria were given the power to stop vehicles "at random" at sobriety checkpoints. Since then, both territories and all but two states have followed suit: the Northern Territory in February 1980, South Australia in October, 1981, the Australian Capital Territory and New South Wales in December 1982, and Tasmania in January 1983 (Homel, et al, 1988).

In March, 1987, police were given the power to test any person "found driving" a motor vehicle. The existence of this random breath testing legislation in most parts of Australia does not automatically mean that what actually happens in terms of enforcement is the same in all parts of the country. There is considerable diversity among the regions.

a) Western Australia and Queensland

Sobriety checkpoints are used and drivers must exhibit evidence of inebriation prior to being breathalyzed (Homel, et al, 1988).

b) Victoria

Full random breath testing is used, but the distinguishing feature of the Victorian program is the use of intensified periods of testing in areas selected according to a pre-determined experimental design. The Victorian program is not enforcement oriented and hence motorists found to be over the limit are not arrested, but charged on summons and subsequently breathalyzed at a police station. Only then, if they are found to be over .05, are they arrested (Homel, et al, 1988).

c) South Australia

This program is similar to the Victorian program.

d) Tasmania

This state introduced random breath testing in January 1983. In contrast to Victoria and South Australia, but in line with New South Wales, random breath testing has been enforced and publicized at an intense level. In 1985, more than 200,000 roadside tests were conducted out of a driving population of 268,887 (Homel, et al, 1988).

Three mobile breath analysis units are commonly transferred to at least five different sites in an eight hour shift and since they are equipped with breath analysis equipment as well as cooking, toilet and electricity generating facilities, testing can proceed uninterrupted over the shift. Occasional massive operations, Victorian style, are undertaken, and only after their completion are public announcements about them made by authorities. Since Tasmania is a small state, publicity through the electronic media is bought by the Government, but extensive free publicity is achieved through newspapers. In particular, a daily list of the names of convicted impaired drivers is published in the papers (Homel, et al, 1988).

In Tasmania, the procedure for establishing a random breath test is as follows:

- i) The location is selected at random (within the constraints of practicality and safety).

- ii) The location is used at randomly assigned times.
- iii) When in use as a random breath test station, motor vehicles are stopped at random and the driver of the vehicle is requested to use the screening device.
- iv) Drivers returning a negative result are not detained. Drivers returning a positive result are detained for a subsequent evidential test (Sutton, et al, 1987).

e) New South Wales

Similar to the Tasmanian experience, noted above, random breath testing has been enforced in New South Wales in a vigorous manner and has been extensively supported by high quality media publicity. Moreover, both enforcement and publicity have been maintained at high levels for several years. This level of enforcement and publicity over a long period is in marked contrast to the conditions prevailing in most other jurisdictions which have introduced sudden changes to drink-drive law or its method of enforcement (Homel, et al, 1988).

No specific operational data is provided in the literature on the New South Wales program.

D. ASSESSMENT OF INITIATIVE

Extensive evaluations have been completed on the random breath testing program operational in Tasmania and New South Wales.

1. Tasmania

Since the introduction of random breath testing in Tasmania, the road toll has fallen by more than 30%. In the 18 months preceding the introduction of random breath tests, the road toll for Tasmania averaged 51 persons per annum. In the 18 months following the introduction of random breath tests, the road toll averaged 35 persons per annum (Sutton, et al, 1987).

2. New South Wales

Alcohol related fatalities have been consistently lower - by more than one third - in New South Wales in the 1980's than in the 1970's. The reason for this sustained decline say the authors of a major study of alcohol impaired driving countermeasures in Australia is the "powerful and sustained deterrent impact" of random breath testing (Homel, et al, 1988).

The scale of testing is unprecedented anywhere in the world, with about one in three of New South Wales drivers being tested each year. Checkpoints are unannounced, but highly visible, and passing drivers are required to take a breath

test for alcohol. Surveys indicate that over 80 percent of the respondents have seen a random breath testing checkpoint operation in the past six months, and half reported having been tested at some time (Homel, et al, 1988).

Because evaluation measures and opinion surveys were built into the random breath testing program, researchers were able to track the effects of the laws and the public's reactions over time.

Three years after the 1982 passage of the law as a trial program, fatal crashes were down 21%. Before the law, there was an average of 13 "classic" alcohol-related fatal and serious injury crashes each week. For the four years after, the average dropped by 35% to 9. For three years prior to introduction of random breath testing, the average number of drivers and riders killed with a blood alcohol concentration (BAC) of 0.05 or more was 4.4 per week. For the four years after, it dropped by 36% to 2.8 (Homel, et al, 1988).

Both "vigorous and wholehearted" enforcement of random breath testing and "high quality media publicity" have been maintained for several years in New South Wales, Australia's most populous state.

Random breath testing of drivers was initially introduced with a \$1,000,000 publicity program. However, the authors note "an important aspect of the media publicity was the interest expressed spontaneously in newspapers in the form of letters, articles, editorials and cartoons" (Homel, et al, 1988).

In the first year of random breath testing, nearly one million preliminary breath tests were conducted - that equals one-third of New South Wales' licensed drivers. In recent years, testing has continued at even higher levels and has been extended to early morning hours "to counter the avoidance behavior of motorists who were staying out late hoping to avoid random breath testing" (Homel, et al, 1988).

The surveys taken as part of the program showed that random breath testing provided an excuse for about 40% of drinking licence holders to reduce alcohol consumption. The provision of an "excuse" was as important as the direct fear of arrest in encouraging drinkers to adopt strategies to avoid driving over the legal limit. Heavy drinkers and drivers with an alcohol-driving conviction changed their behavior in more ways due to random breath testing than low-risk drivers (Homel, et al, 1988).

The surveys also found that three-fourths of those interviewed perceived they might be caught in the random breath testing checkpoints: this perception increased to nearly 90% by 1987. In addition, people who held a highly negative opinion of alcohol-impaired drivers involved in a crash increased from 77% in 1982 to 86% in 1987, and respondents had only a slightly less critical opinion of alcohol-impaired drivers stopped by the police (63% in 1982 and 7% in 1987) (Homel, et al, 1988).

Apparently convinced by the dramatic fatality reductions, public support for the program has grown from 64% in 1982 to 97% in 1987. The authors conclude that "it is difficult to imagine any measure a government could take with such universal support, especially from a segment of the community who might be considered to be adversely affected" (Homel, et al, 1988).

E. FINANCIAL COST FOR FURTHER PROGRAM DEVELOPMENT

The available literature does not provide any information about the start up and operational costs inherent in implementing a random breath testing program.

F. OPTIONS FOR PROGRAM IMPLEMENTATION IN ALBERTA

It may be difficult to implement a true random breath testing program in Alberta, given the Canadian constitutional climate. Notwithstanding this issue, a program could be implemented by providing police authorities with hand held alert breathalyzers so that drivers chosen randomly, as they enter a Checkstop, could be requested to provide preliminary breath samples. If an "alert" was registered, the driver would then be asked to provide a deep lung sample. Alternatively, everyone entering a Checkstop could be requested to provide a preliminary breath sample into a hand held alert breathalyzer. The latter option:

1. Increases the likelihood of apprehending all impaired drivers, entering a Checkstop.
2. Makes preliminary breath testing a condition of all Checkstops.
3. Guarantees equal treatment for all persons entering a Checkstop.

This option may make the Random Breath Testing Program constitutionally sound.

G. CONCLUSION

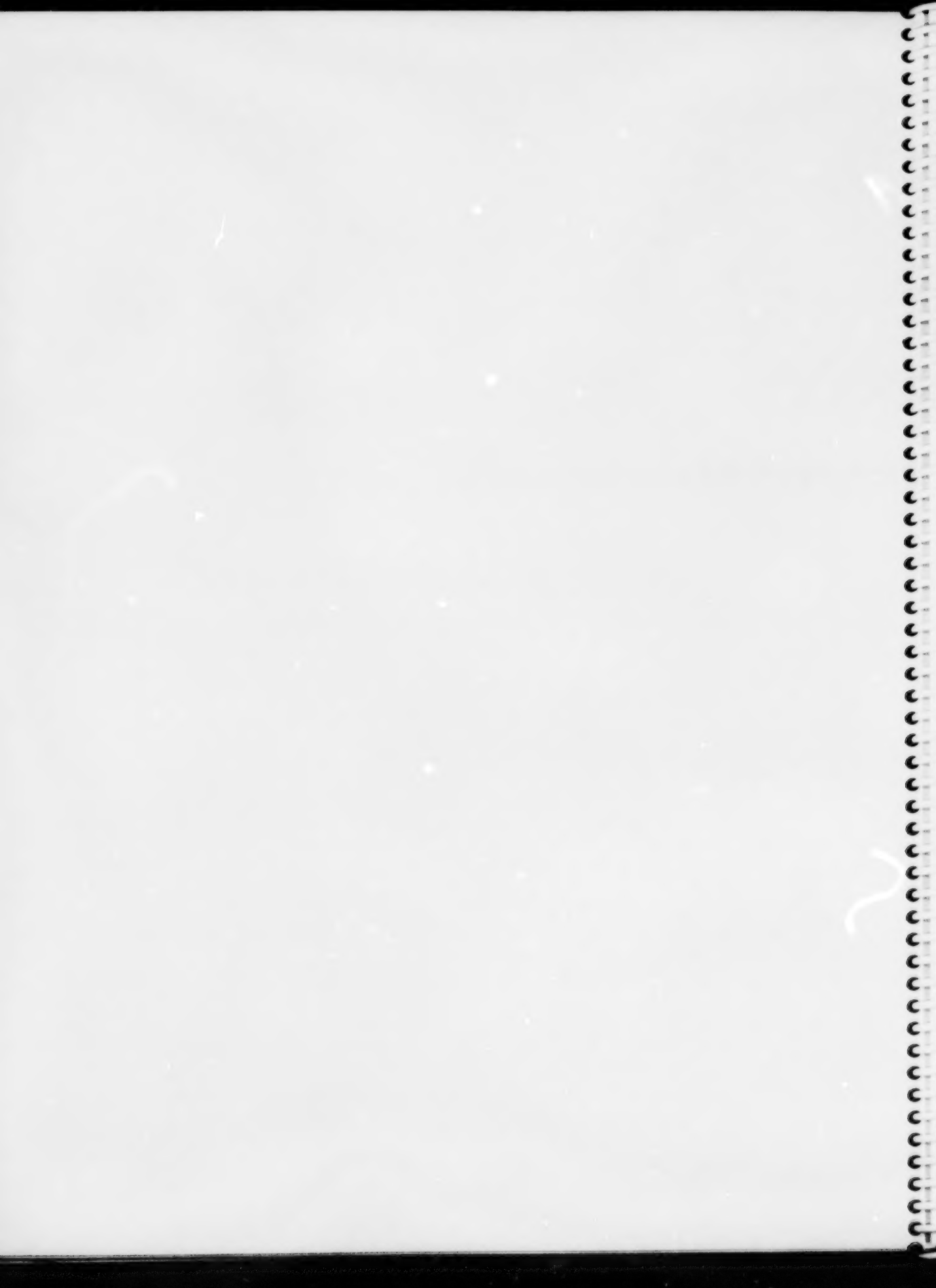
The preceding paper has described the concept of random breath testing and provided comments as to how it has been used in other jurisdictions and with what degree of success. In the event a Random Breath Testing Program is implemented in Alberta, consideration must be given to the following:

1. A legal opinion should be secured as to the constitutionality of this type of program.
2. Publicity and visible enforcement must be an integral part of any random breath testing program.
3. Evaluation should be a component in the implementation of all new countermeasures.

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VEHICLE IMMOBILIZATION



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A. INTRODUCTION

The following briefing paper will focus on twenty-four hour vehicle immobilization as a way to prevent a continuation of an offence and/or re-offence of impaired driving or other alcohol related driving infractions. This paper will:

1. Describe the legislation as it applies to vehicle immobilization;
2. Provide a brief description of mechanical vehicle immobilization;
3. Describe the objectives of vehicle immobilization;
4. Describe the pilot project that took place in Calgary and Lacombe;
5. Provide an evaluation of the above noted pilot project.

B. MOTOR VEHICLE ADMINISTRATION ACT

The Motor Vehicle Administration Act sanctions the deprivation of access to vehicles in the following ways:

1. Suspension of vehicle registration;
2. Seizure of vehicles;
3. Vehicle immobilization.

Vehicle immobilization can be used under these circumstances:

1. Twenty-four hour immobilization of vehicles for persons charged with impaired driving (Section 110.1 Motor Vehicle Administration Act);
2. Longer term vehicle immobilization imposed by the Court for convicted impaired drivers (Section 112 Motor Vehicle Administration Act).

Section 110.1 allowing for 24 hour immobilization was proclaimed October 1, 1988.

C. MECHANICAL VEHICLE IMMOBILIZATION

Vehicle immobilization refers to the attaching of a wheel locking device to a motor vehicle. Often referred to as the "Denver Boot", it consists of a clamp and hub. The clamp holds the tire, while the hub cover prevents access to the lug nuts - making it difficult to remove the wheel. The one Canadian city (Montreal) utilizing vehicle immobilization and the American jurisdictions that are using same, only do so to enforce the payment of outstanding parking tickets.

D. OBJECTIVES OF VEHICLE IMMOBILIZATION

The objectives of the 24 hour immobilization program are:

1. To prevent a person charged with impaired driving from re-offending;
2. To remind the general public of the consequences of impaired driving.

The psychological impact of seeing an immobilization device on a vehicle will hopefully deter the public from driving while impaired.

E. PILOT PROJECT

1. Introduction

The pilot project took place in the City of Calgary and the Town of Lacombe, for a three month period, commencing in November 1988. The project focused on the use of immobilization devices in situations where police officers suspected that the person charged might within 24 hours of being charged again commit a similar offence, by returning to the vehicle and attempting to drive.

2. Products

Following a review of the literature on immobilization devices used in Montreal, Denver, Boston, Washington, D.C., and extensive discussions with New York and Los Angeles authorities about their immobilization device testing programs, it was concluded that the best immobilization devices for the purposes of the pilot project were:

- a) The Universal Auto Boot - Sabodoin Enterprises Ltd. Repentigny, Quebec, Canada

COST: \$575.00

- b) The Palma Auto Boot - Arlington, Virginia, U.S.A.

COST: \$525.00*

*exact costs are difficult to determine due to shipping/duty charges/price negotiations.

For the pilot project both auto boot companies agreed to supply nine immobilization devices each at no cost. Shipping costs of \$270 for the delivery of the Palma Auto-Boot were expended by the Department. In the event the pilot project is extended into an ongoing program, the immobilization devices will be purchased by the towing companies. The immobilization devices can be supplied within a two week period. The pilot project served to evaluate the products and make a determination as to the preferred device.

3. Fees

The booting fee for the pilot project was set at \$35.00 in Calgary and \$30.00 in Lacombe.

Once a decision was made by the police to immobilize or seize (by towing) a vehicle, the Calgary City Police offered the person charged, the option of having an auto boot installed and removed at a cost of \$35.00, or being towed at a minimum cost of \$62.50.

In Lacombe the booting fee was the same as the towing fee but the option of being towed versus being booted was not given to the person charged.

4. Use

In the Calgary Pilot Project, the immobilization devices were used primarily at Checkstop locations and immobilized vehicles were parked on a side street. The Calgary Checkstop program operates on a year-round basis.

In the Lacombe Pilot Project the immobilization devices were used at Checkstop locations, as well as in other locations throughout the town, on an ongoing basis.

5. Towing Companies

The towing companies used for the pilot project were:

- a) Metro Towing - Calgary
- b) Popows Towing - Lacombe

These companies were chosen because they already have towing contracts with their respective police departments.

6. Notification Form - Disclaimer

An Immobilization Notice containing a disclaimer was placed in each vehicle. This form was developed by the Department of the Solicitor General in conjunction with police agencies at a cost of \$500 to the Department. A copy of the Immobilization Notice was given to the person charged, the towing company and a copy retained by the police. A copy was also left with the vehicle on the back side of the "Warning do not move this vehicle" sign. The form indicates the location of the vehicle, and provides the person charged with instructions to obtain the release of the vehicle. The disclaimer reads as follows:

The Government of Alberta and the police department named above assume no liability for loss or damage to this vehicle or its contents while so immobilized. Attempting to operate this vehicle, while the immobilization device is attached will result in serious damage to the vehicle.

7. Police Procedures

- a) Once the police officer decided to charge a person with an impaired driving offence under the Criminal Code and reasonably suspected that that person may within 24 hours of being charged again commit a similar offence, the police officer ordered the installation of an immobilization device.



- b) The police officer telephoned the towing company and advised that a vehicle immobilization device was required. The following information was provided:
 - i) Make, colour and model of the vehicle;
 - ii) Licence number of the vehicle;
 - iii) Name of the driver of the vehicle;
 - iv) Name of registered owner of the vehicle;
 - v) Location of the vehicle;
 - vi) Period of time during which the immobilization device must remain installed, i.e. installed at 6:00 p.m., may not be removed until 12:00 p.m. the following day (18 hours).
- c) The police officer ensured that the vehicle was legally parked and completed the Immobilization Notice containing the disclaimer and other relevant information. A copy of the notice was given to the person charged, and the towing company.

Note: These procedures varied slightly depending on the specific requirements of each police department.

8. Towing Company Procedures

The towing company:

- a) Installed the boot at the request of the police officer.
- b) After the immobilization period had expired and the fee had been collected, removed the immobilization device within two hours (total period of time not to exceed 24 hours).
- c) In the event the person authorized by the police to claim a vehicle appeared to be intoxicated, the towing company personnel advised the police immediately.
- d) In circumstances where the declamping fee was not paid, the towing company removed the boot, towed the vehicle and stored it in their compound, until the vehicle was claimed and both the declamping fee and towing fee were paid.

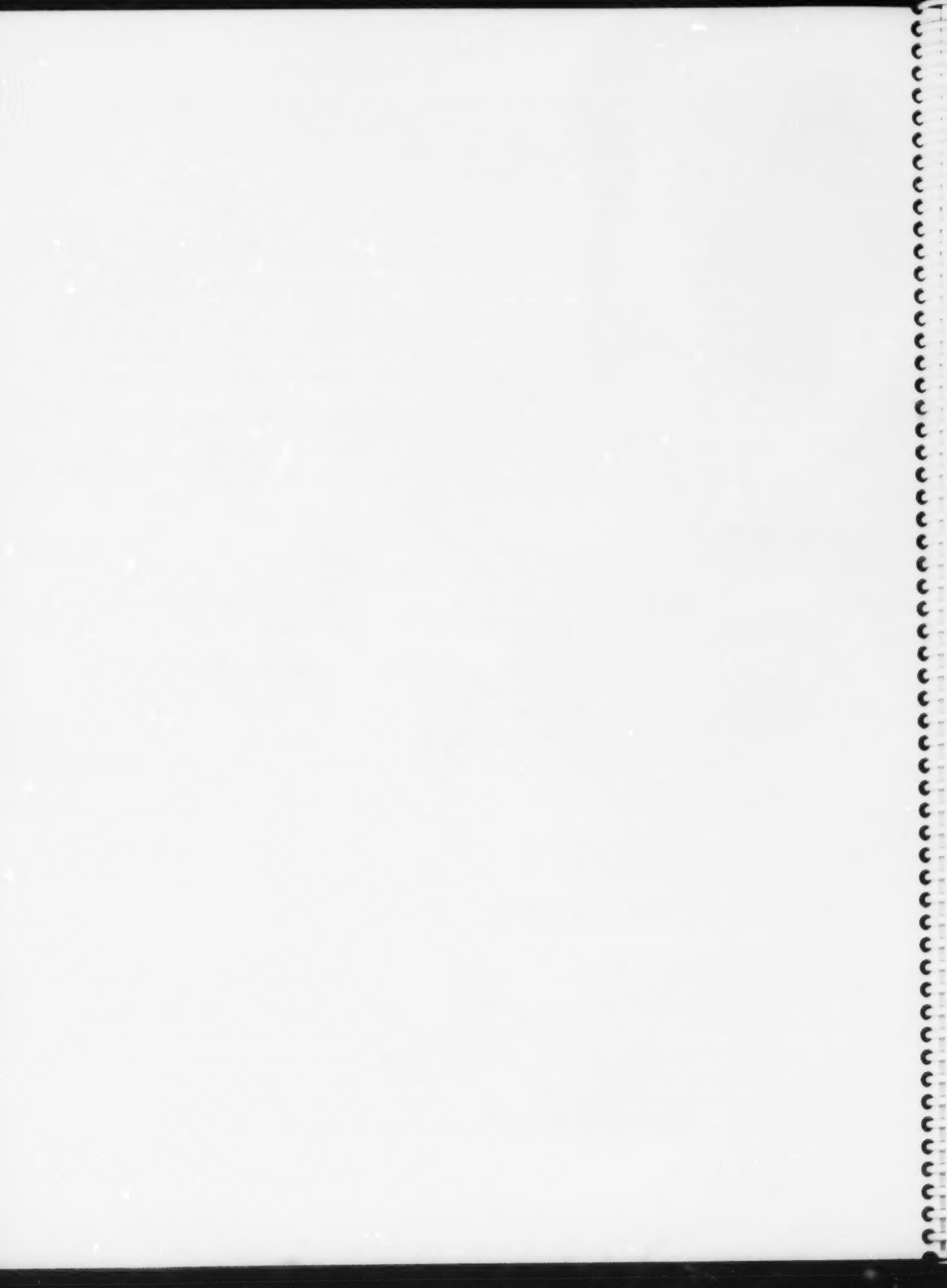
9. Communication

A press release was issued immediately prior to the pilot project, in conjunction with the Calgary and Lacombe Police Services.

F. EVALUATION OF PILOT PROJECT

1. Evaluation Process

A meeting to evaluate the program was held with Inspector G. Befus, Staff Sergeant R. Hume, and Constable B. Killen of the Calgary Police Service, and Mr. J. Baum of Metro Towing Calgary, on March 7, 1989. A telephone interview was conducted with Chief Gordon Rear of the Lacombe Police Service on March 6, 1989. His comments have been included in this report. Information from monthly program reports received from both police services is also included.



2. Media/Public Reaction

The initial media and public reaction to the vehicle immobilization program was very positive. Extensive coverage was given by the major newspapers in Calgary as well as some coverage in the Edmonton newspapers. Local T.V. and radio stations in both Calgary and Red Deer presented profiles of the program on their television newscasts. Interviews and demonstrations of the boot installation were provided by both police services to all interested media.

3. Number/Location of Auto Boot Installations

There were a total of 29 auto boots installed in Calgary, eight Palma Auto Boots and 21 Universal Auto Boots. Twenty-six of the auto boots were installed on main roadways and three in residential areas. There were seven auto boots installed in Lacombe, one Palma and six Universal. Four were installed on main roadways, two in residential areas and one on a shopping mall parking lot.

The month of February was a poor month in that only four auto boot installations occurred, three in Calgary and one in Lacombe. The cold weather and heavy snow pile up made it impossible to place vehicles near major road ways and ensure the vehicles were safely parked.

4. Operational Procedures

Lacombe Police did not report any operational problems with the program. The Calgary Police, however, reported that in order for an auto boot to be installed all components of the Checkstop program must be in a "perfect" setting. That is to say, that, the breath alcohol testing van, technician, accused, tow truck driver, etc., must be at the scene. Some of the reasons they gave for not booting vehicles were location, valuables in the vehicle, value or type of vehicle, and lastly that given a choice, many persons charged, preferred to have their vehicles towed to save embarrassment. The Calgary Police gave persons charged the option of having their vehicle towed or booted. The booting fee was \$35.00 while the towing fee was \$62.50. The Lacombe Police did not present the person charged with a choice. The police officer made the decision whether or not to boot the vehicle. The booting and towing fee were the same in Lacombe (\$30.00).

5. Use of the Program at Locations Other Than Checkstop Locations

The vehicle immobilization program was used only in conjunction with Checkstop locations in Calgary. The Calgary Police Service and Metro Towing were both in favor of expanding the program to all areas of the city, once the pilot project was completed. It was felt that the immobilization program would have additional impact if vehicles driven by persons charged with impaired driving, were immobilized in residential areas.



The Lacombe program operated throughout the town and was used in all locations, including Checkstop locations.

6. Product Evaluation

There were no major product problems reported during the pilot project, however, a preference for the Universal boot, because it is easier to install, was indicated by the towing companies in both Calgary and Lacombe. The largest of the Palma boots was used exclusively for immobilizing vehicles with over sized tires and/or rims by Metro towing in Calgary.

7. Legislation

On one occasion a driver who was previously charged was able to remove a Palma Auto Boot from his vehicle. The boot was not properly installed, which allowed the driver to remove the lug nuts and wheel from his vehicle. The boot was not removed from the vehicle wheel. The driver was in the process of putting on his spare tire, when observed by constables in a passing police cruiser. The driver was charged with mischief and obstruction and will appear in court in June 1989.

A concern by the Calgary Police Service and the crown prosecutor's office was raised about the lack of legislation in the Motor Vehicles Administration Act, which provides a penalty for driver's who attempt to remove the immobilization device.

8. Vandalism/Theft

None of the vehicles that were immobilized experienced any incidents of vandalism or theft.

9. Liability Issue

The Calgary Police Service decided to give the person charged with impaired driving the choice of having an auto boot installed or being towed, because of their concern about being held liable for vandalism to or theft from the vehicle after it was immobilized.

The choice to use the auto boot was also made more attractive to persons charged because of the cost differential (\$35.00 for the boot vs. \$62.50 for towing). This is not the most desirable situation, however, the Calgary Police Service on the advice of their city solicitor decided to operate the program in this manner.

Other municipal police forces and the RCMP have raised a similar concern about liability and will not participate in the program, unless they receive some assurance from the Department, that they will be "held harmless" for liability unrelated to their negligence or misconduct.

The Insurance Bureau of Canada advised the Department in writing that the Insurance Industry supports the vehicle immobilization program and that all immobilized vehicles insured for vandalism and theft will be covered.

Alberta Treasury, Risk Management, have advised that in their opinion the risk involved in the operation of this program is minimal, providing the waiver form is used and the police use reasonable discretion, i.e. not leaving an expensive vehicle immobilized in a high crime area.

Although Risk Management does not agree with the police services' requests for "hold harmless" agreements, they acknowledge the right of the Solicitor General to enter into such an agreement. The Department of the Attorney General, Civil Law Section, further advised that they cannot foresee any legal problems with the department entering into a "hold harmless" agreement with the police services.

10. Waiver Forms

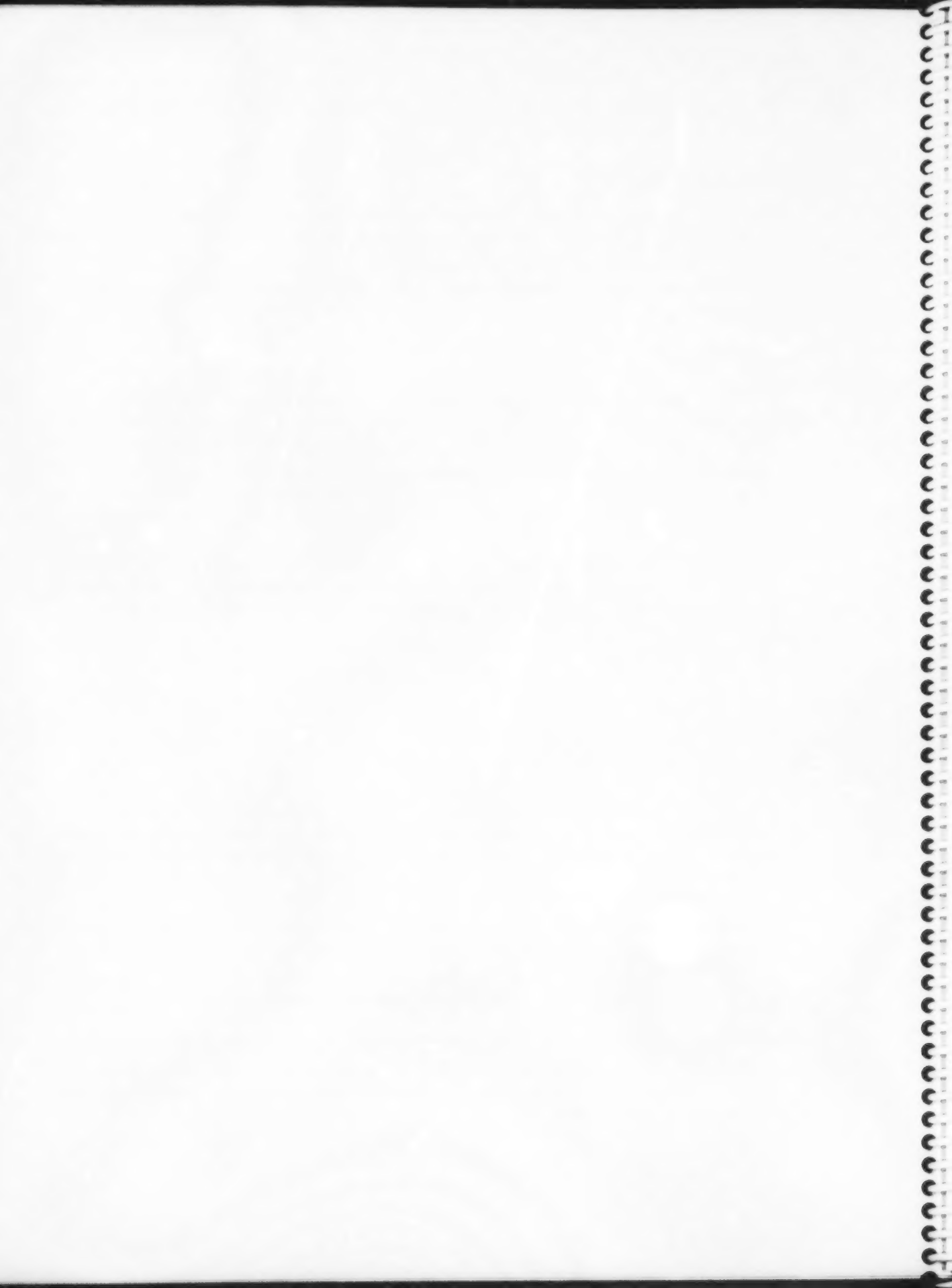
The existing waiver forms worked well when placed inside the vehicle. There were, however, a few situations where the forms had to be placed outside the vehicle, usually under the windshield wiper.

11. Program Status

The vehicle immobilization program has been extended by mutual agreement to April 30, 1989. The rationale for the extension is to allow the program to operate under more favorable weather conditions. It is hoped that the liability issue will be resolved during this period of time.

G. CONCLUSIONS

1. Initially the vehicle immobilization program had a very positive response from the general public. During December the program's profile was high and served to increase public awareness about the consequences of impaired driving. The awareness continued during January, but tended to drop off in February due to the sporadic use of the program as a result of cold weather and snow pile up. In order to maintain the profile of the program, it will be necessary to develop a media campaign to advertise its continued use. Expanding the program across the province will also assist in increasing its profile.
2. The Calgary and Lacombe police services support the continued use and expansion of the vehicle immobilization program. The towing companies which are an essential part of the program continue to be supportive.
3. The police concern about liability is a key issue and must be resolved if the program is to continue and be expanded across the province.



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H. RECOMMENDATIONS

It is recommended that:

1. The 24 hour vehicle immobilization program be expanded across the province. A meeting is required with the RCMP and municipal police services to determine which locations would be most appropriate for program implementation (pending resolution of Recommendation 2. below).
2. The Department of the Solicitor General provide all municipal police services and the RCMP with a letter of understanding indicating that the department will assume responsibility for the costs of any liability action and subsequent judgement arising from theft from or vandalism to vehicles immobilized by police, where the liability was unrelated to police negligence or misconduct. Any such costs should be considered a program expense.
3. Consideration should be given to incorporating penalty legislation in the Motor Vehicle Administration Act which covers tampering with or removal of a vehicle immobilization device (at such time as further legislative amendments to the Act are under review).
4. That the program be expanded and be used, in addition to Checkstop locations, in other appropriate situations where impaired drivers are charged.
5. A media campaign be utilized to advertise the program in conjunction with other impaired driving initiatives, once the vehicle immobilization program is expanded across the province.
6. Additional forms be ordered with a "stick on" capability which can be placed on the outside of vehicle windows, when necessary.
7. The development of the court ordered vehicle immobilization program (Section 112.1 Motor Vehicle Administration Act) be held in abeyance until the 24 hour suspension program is fully operational across the province.